

REMARKS/ARGUMENTS

With the entry of the foregoing amendments, claims 1-15 are submitted for reconsideration.

Although claim 1 as originally presented is distinguishable over the prior art (as discussed below), the applicant has amended claim 1 to even further distinguish the claimed invention from the cited prior art. Claim 1 has been amended as supported by the specification, for example, in Figures 1-6.

At the outset, applicant notes with appreciation that at least claims 9-12 contain allowable subject matter. As discussed below, all pending claims contain allowable subject matter.

Turning to page 2 of the Official Action, claim 1 stands rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Long (U.S. Patent 4,068,687). Applicant respectfully requests the withdrawal of this rejection for the following reasons.

Claim 1 as it originally stood, and as amended above, requires the presence of a mount adapted to releasably secure the apparatus to the fluid reservoir. Long does not disclose or suggest this requirement. More specifically, Long does not disclose a filling apparatus attachable to the neck of a fluid reservoir. Long merely discloses a vapor tube 40 that is received within a fill pipe 14 of a tank 13. However, it is not correct to state that the vapor tube 40 is attachable to the fill pipe 14 of the tank 13. Rather, the vapor tube 40 is simply inserted into the fill pipe 14. Thus, Long does not disclose the claimed feature that requires the presence of a mount adapted to releasably secure the apparatus to the fluid reservoir.

Moreover, applicant does not agree with the contention in the Official Action which states that Long's flange 45 located along the length of the vapor tube 40 is the equivalent of the claimed mount adapted to releasably secure the apparatus to the fluid reservoir. Respectfully

stated, Long's flange 45 does not, in any manner, releasably secure the vapor tube 40 to the fill pipe 14. Instead, it merely acts as a stop. Thus, Long does not disclose or suggest the originally claimed invention.

The foregoing amendments even further distinguish the claimed invention from the apparatus disclosed in Long. For example, the claimed invention requires a stem extending directly from the container. Long does not disclose this feature. The Office Action contends that Long discloses a filling apparatus with a container, namely, the underground gasoline tank, which is not shown in the figures represented in the Long patent. The Long underground tank is located some distance from the apparatus illustrated in Long. Although it is true that Long discloses an apparatus that has a mechanism for allowing vapor to be introduced into the container, that mechanism has nothing to do with preventing the formation of a partial vacuum in the container. Rather, it is merely concerned with relieving vapor pressure in the tank 13. Thus, Long does not disclose the claimed stem that extends directly from the container.

In addition, claim 1 requires that a tap be located on the stem. Long does not disclose this feature. Instead, Long is merely concerned with providing a dispensing nozzle 11 having an automatic shut-off type configuration. When the vapor tube is inserted into the fill neck 14 of Long, that tube is depressed to travel against the action of the spring 42 to allow the vacuum chamber 23 to communicate with the open end 40c which forms the vapor entrance opening. Likewise, chamber 23 may communicate with vapor outlet passage 26 such that when the lever 21 is operated to pivot about point 21a, a control valve 20 is operated to unseat the valve member contained at its end to allow fluid to pass through passageway 16b and into the tank 13 and vapor to flow into chamber 23 through outlet passageway 26 and through passage 16a into the underground storage tank. When the level of the liquid in tank 13 reaches the end of the vapor

MITCHELL, David
Appl. No. 10/721,085
September 7, 2004

tube, a partial vacuum is created in chamber 23 to cause the diaphragm 48 to lift -- taking the pin 51 along with it to then dislodge the ball 53 to allow the plunger 52 to drop and move from the position shown in figure 2 of Long to disable the lever 21 and shut off the flow of fluid through passage 16b so that no further gasoline is caused to flow into the tank 13. Respectfully submitted, this Long disclosure has nothing to do with preventing the formation of a partial vacuum in the underground tank or the container, as the Office Action terms it. Thus, correctly stated, the operation of the apparatus disclosed in Long is not concerned with preventing the formation of a partial vacuum in the container (or underground tank), but rather utilizes the vapor flowing through the apparatus to disable the trigger 21 once the end of the vapor tube 40 is covered by the gasoline so that the tank 13 cannot be overfilled. At no stage does operation of the trigger 21 result in the simultaneous opening or closing of both the liquid and vapor passages -- in contrast to the claimed invention. Indeed, Long specifically states in column 4, beginning at line 53, that the vapor outlet passageway 26 and the liquid inlet passageway 27 are sealed off from each other at the end of the vapor outlet passageway by a seal 28, and it also mentions that the valve 20 controls the flow of liquid between the inlet passageway 27 and the liquid outlet passageway 30. This does not disclose the claimed invention.

For the foregoing reasons, applicant submits that claim 1 as originally filed, or as amended, is not anticipated or rendered obvious by Long.

The Office Action also rejects claims 1, 2, 7 and 13-15 as allegedly being anticipated by Matthews (U.S. Patent 243,148), and rejects claims 3-6 as allegedly being obvious over Matthews. Applicant respectfully requests the withdrawal of these rejections based upon the following remarks.

The claimed invention concerns the dispensing of a liquid and the provision of a mechanism to prevent the formation of a partial vacuum in the dispensing container. This is completely different than any apparatus disclosed or suggested in Matthews. More specifically, Matthews is concerned with an apparatus for dispensing carbonated and other aerated beverages. The Matthews apparatus has two outlets. One of these outlets communicates with a pipe I that extends nearly to the top of a fountain B for dispensing gas from the fountain while the other outlet is a bottom outlet that allows the liquid to flow out in a downward direction from the fountain B whenever a valve is open. As a result, the Matthews apparatus simultaneously dispenses both a gas and a liquid into a receiving receptacle. This is completely different than the claimed invention. The claimed invention requires a filling apparatus that has a first passage extending through and along the stem for allowing fluid to flow from the container to the reservoir, and a second passage extending through and along the stem for allowing air to be introduced into the container to prevent the formation of a partial vacuum in the container when fluid is allowed to flow from the container. Matthews does not disclose or suggest these features, nor does Matthews attempt to address the concerns of the subject invention.

In addition, the claimed invention requires a mount adapted to releasably secure the apparatus to the fluid reservoir. Matthews does not disclose or suggest this feature. Contrary to the Office Action contentions, the fluid reservoir F is not a reservoir that is filled from the fountain B. Rather, as is apparent from the left hand column of page 3 of Matthews, at line 23, the cup F is employed in the process to fill the fountain B both with liquid and gas as shown in Figure 4 of Matthews. In the passage bridging the two columns on page 3 of Matthews, it is specifically taught how a drinking tumbler may be filled simultaneously with both liquid and gas. Although it is true that the tumbler is pressed against and sealed against the seal N

MITCHELL, David
Appl. No. 10/721,085
September 7, 2004

illustrated in the various figures, there is no disclosure or teaching that suggests attaching the tumbler to the fountain B. Rather, the tumbler is simply placed against the seal or packing N. The packing N is not the claimed mount adapted to releasably secure any fountain B to any tumbler. Fairly stated, Matthews does not disclose or suggest a releasable securing. Nor does Matthews teach or suggest an apparatus that is constructed and functions in the manner claimed.

For the foregoing reasons, applicant respectfully requests the withdrawal of the anticipatory and obviousness rejections based upon the Matthews reference.

The Office Action also contends that claims 1 and 3-7 are allegedly anticipated by Turner (U.S. Patent 2,463,922) and claim 8 is allegedly obvious in view of Turner. For the following reasons, applicant requests the withdrawal of the anticipatory and obviousness rejections based on Turner.

Among other things, Turner does not disclose the claimed mount for releasably attaching the stem to a reservoir to be filled. Turner is merely concerned with a liquid dispenser for dispensing a pre-determined quantity of liquid and has means for automatically stopping the flow of the liquid upon the removal of the predetermined quantity. Turner simply has radially extending arms 54 that may abut a receptacle or glass 56. There is no releasable attachment, and Turner does not have any mechanism that allows the apparatus to be attached to the container to be filled. In operation, Turner teaches that a glass 56 is placed in position in the seat 96 of the support 58, and the spring 87 urges the glass 56 upwardly into engagement with the arms 54, which lift the valve 22 into the position shown in Figure 2 of Turner. When so positioned, liquid flows downwardly inside the tube 40 and into the glass 56. Air is permitted to enter the stem 20 for admission into the inlet openings 44 as the liquid rises in the glass to the lower end of the valve 22, and the valve becomes submerged in liquid flowing into the chamber 42 by way of

MITCHELL, David
Appl. No. 10/721,085
September 7, 2004

openings 46. Thus, the liquid in the glass 56 closes the air inlet opening in the valve stem 20 to prevent further entrance of air into the stem. The liquid then stops flowing from the bottle 10 when air is stopped flowing through the stem 20. This is completely unlike the claimed invention.

Furthermore, Turner does not disclose or suggest the claimed tap located on the stem operable between on and off positions to simultaneously close off both of the passages to either allow or prevent the flow of liquid and gas in the respective passages. In Turner, the movement from the stem from the Figure 1 to the Figure 2 position may be thought of as amounting to operation of a tap or valve to uncover the outlet openings 30 for liquid. The openings 44 that presumably are diametrically opposed in the upper end of the stem 20 are always open. Thus, there is no tap or valve which opens and closes the openings 44. Rather, movement of the stem 20 from the position shown in Figure 1 to the position shown in Figure 2 allows those openings to be positioned within the bottle 20 to allow air from the glass 56 to enter the interior of the bottle. Thus, Turner does not disclose or teach a claimed stem that is operable between on and off positions to simultaneously close off both of the passages to either allow or prevent the flow of liquid and gas in the respective passages.

For the foregoing reasons, applicant respectfully requests the withdrawal of the anticipatory and obviousness rejections based upon Turner.

In view of the amendments and remarks, applicant respectfully submits that this case is in condition for allowance and earnestly solicits a notice to that effect. If the examiner has any questions concerning this case, the undersigned may be contacted at 703-816-4009.

MITCHELL, David
Appl. No. 10/721,085
September 7, 2004

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____

Duane M. Byers
Reg. No. 33,363



DMB:lfo
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100